

STATE OF MICHIGAN
COURT OF APPEALS

AMANDA ANN PAULY,

Plaintiff/Cross-Defendant-
Appellant,

v

JEFFREY BERNARD HELTON,

Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED
May 17, 2016

No. 330805
Presque Isle Circuit Court
LC No. 15-084054-DS

Before: GLEICHER, P.J., and SAWYER and M. J. KELLY, JJ.

PER CURIAM.

Following their separation, Amanda Pauly sought sole physical custody of the parties' three minor children, while Jeffrey Helton filed a countercomplaint requesting a joint custody arrangement. The circuit court awarded primary physical custody of the couple's daughter to Pauly and their oldest son to Helton, while awarding the parties joint physical custody of their youngest son. In doing so, the circuit court cited none of the best-interest factors of MCL 722.23 and made no determination whether any particular factor favored one party over the other. While the court summarized the evidence upon which it relied in making its custody determination, it failed to connect this evidence to the statutory factors. We are therefore left unable to review the court's custody decision. We remand to the circuit court for further hearing and to elucidate its decision in a manner capable of appellate review.

I. BACKGROUND

The parties never married but were involved in a long-term relationship, during which they had three children. Although their relationship ended in November 2014, Helton continued to reside in the family home until June 2015. Helton then moved into a neighbor's home free of charge to care for the property after the owners moved away. Pauly immediately filed a complaint for child support and sought sole physical custody of the children. Helton sought an equal parenting time arrangement.

The matter quickly proceeded to a hearing at which the parties were the only witnesses. The parties agreed that Pauly was the breadwinner for the family, paid all the bills, and provided the home in which they lived. She was attending community college classes to improve her income-earning potential. Helton had been sporadically employed during the parties' relationship and had been unemployed for the past four years. Helton suffered from diabetes and

depression as well as chronic back pain and was attempting to secure Social Security Disability income. In the meantime, Helton had no income and could not meet the utility fee obligations for the house in which he resided. Helton also had three children from a prior relationship for whom he owed child support.

Pauly alleged that Helton improperly showed favoritism to their oldest son, CH, who was then 12 years old. Their 16-year-old daughter, MH, felt this slight and commented upon it. As a result of this preference, Pauly described that Helton was actively involved in only CH's activities, provided more assistance to CH with his school work than the other children, and took CH for fun outings without the other children. While MH was left to do chores and babysit five-year-old JH, CH had no chores and was permitted more freedom.

The parties agreed that Helton was the primary disciplinarian in the family. Pauly accused Helton of being too harsh, however, and of employing profanity. Pauly asserted that Helton had embarrassed the family with his angry outbursts at CH's wrestling matches and at school. The children also preferred to socialize with their friends at Pauly's home rather than Helton's because of their father's conduct. Helton, on the other hand, believed that Pauly was not strict enough, resulting in MH's and JH's behavioral problems.

A week after the hearing, and following in camera interviews with the three children, the circuit court issued an opinion and order awarding "primary physical custody" of MH to Pauly and CH to Helton. The court awarded the parties joint legal custody of all three children and joint physical custody of JH. Parenting time was to be arranged between the parties.

In a two-page opinion and order, the circuit court noted that the children had an established custodial environment with both parents. The court further recited that it "considered and does apply the best interest factors as defined by the Child Custody Act. MCL 722.23." The court proceeded to review the evidence. In doing so, the court referenced none of the individual best-interest factors, connected none of the evidence to its considerations under any particular factor, and made no conclusions regarding the weight of those factors. Ultimately, the court found that MH had spent most of her time since the separation in Pauly's custody while CH had spent most of his time in Helton's custody. JH had continued to look to both parents and his older sister for his care. Describing the facts as "unique," the court concluded that continuing this arrangement developed through practice was in the children's best interests.

II. ANALYSIS

Three different standards govern our review of a circuit court's decision in a child-custody dispute. We review findings of fact to determine if they are against the great weight of the evidence, we review discretionary decisions for an abuse of discretion, and we review questions of law for clear error. *Fletcher v Fletcher*, 447 Mich 871, 876-877; 526 NW2d 889 (1994). A clear legal error occurs when the circuit court "incorrectly chooses, interprets, or applies the law" *Id.* at 881. [*Kubicki v Sharpe*, 306 Mich App 525, 538; 858 NW2d 57 (2014).]

We must affirm all custody orders on appeal unless the trial court's findings were against the great weight of the evidence, the court committed a palpable abuse of discretion, or the court

made a clear legal error on a major issue. MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010).

“The Child Custody Act ‘applies to all circuit court child custody disputes and actions, whether original or incidental to other actions.’ ” *Pierron*, 486 Mich at 85, quoting MCL 722.26(1). When a court is faced with a custody dispute under the act, it must first determine the child’s established custodial environment. *Butler v Simmons-Butler*, 308 Mich App 195, 202; 863 NW2d 677 (2014). As “the best interests of the child control,” MCL 722.25(1), the court must then consider the best-interest factors of MCL 722.23. The statute provides that “the sum total” of the various enumerated factors coincide with the child’s best interests. Those factors are:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute. [MCL 722.23.]

In reviewing the circuit court's factual findings regarding the best-interest factors, we must not "substitute [our] judgment . . . unless the factual determination clearly preponderates in the opposite direction." *Pierron*, 486 Mich at 85 (quotation marks and citation omitted). We are also bound to defer to the circuit court's assessment of witness credibility. *Shann v Shann*, 293 Mich App 302, 305; 809 NW2d 435 (2011).

Generally, a circuit court must state its factual findings and conclusions under each best-interest factor. *Rittershaus v Rittershaus*, 273 Mich App 462, 475; 730 NW2d 262 (2007). "These findings and conclusions need not include consideration of every piece of evidence entered and argument raised by the parties." *Id.* (quotation marks and citation omitted). " 'However, the record must be sufficient for this Court to determine whether the evidence clearly preponderates against the [lower] court's findings.' " *Id.*, quoting *MacIntyre v MacIntyre*, 267 Mich App 449, 452; 705 NW2d 144 (2005). If the court merely states its conclusion with regard to a particular factor, it must be "independently supported or otherwise corroborated by the evidence on the record and thus amenable to appellate review." *Foskett v Foskett*, 247 Mich App 1, 13; 634 NW2d 363 (2001). Yet, when the court decides not to articulate the facts supporting its determinations, it creates a void in the record. Absent any fact-specific findings, meaningful appellate review is nearly impossible.

Here, the court made a general statement of the evidence upon which it relied in considering the best interests of the children. The court cited not a single factor in its analysis, let alone indicate which parent the factor favored. "A trial court must consider, evaluate, and determine each of the factors listed [in] MCL 722.23 in determining the best interests of the child." *Lombardo v Lombardo*, 202 Mich App 151, 160; 507 NW2d 788 (1993). The court may determine that a particular factor is irrelevant under the circumstances at hand. The court need not reach the substance of such factors, but must make an explicit finding regarding the applicability of that factor. *Pierron*, 486 Mich at 91.

Given this record, we are unable to engage in meaningful appellate review. We therefore remand to the circuit court to enter a new order in which it pays heed to MCL 722.23. The circuit court must consider each statutory factor and indicate whether it is applicable in this matter. If applicable, the court must analyze on the record the relevant evidence and state whether the factor weighs in favor of a particular party. After weighing the sum total of the best-interest factors, the court must iterate the custody arrangement and describe how this arrangement serves the children's best interests. Before doing so, however, the circuit court must accept up-to-date evidence at a continued hearing and ensure that its decision is in the best interests of the children at the current time. See *Ritterhaus*, 273 Mich App at 475-476.

We remand for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Michael J. Kelly

Court of Appeals, State of Michigan

ORDER

Amanda Ann Pauly v Jeffrey Bernard Helton

Docket No. 330805

LC No. 15-084054-DS

Elizabeth L. Gleicher
Presiding Judge

David H. Sawyer

Michael J. Kelly
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 28 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the circuit court must conduct a hearing to consider current evidence regarding the best interests of the parties' minor children. Within 14 days of the hearing, the circuit court must issue an opinion and order resolving the parties' custody dispute. The court must identify, consider, and weigh each best-interest factor under MCL 722.23. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAY 17 2016

Date

Chief Clerk